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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,786	08/31/2001	Michel Shane Simpson	1363-007	1045
7590 11/25/2008 Michael T Sanderson Esq King & Schickli PLLc 247 North Broadway Lexington, KY 40507				
EXAMINER LY, ANH				
ART UNIT 2162		PAPER NUMBER		
MAIL DATE 11/25/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/943,786

Applicant(s)

SIMPSON ET AL

Examiner

ANH LY

Art Unit

2162

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
4a) Of the above claim(s) 1-20, 25, 26, 30, 31, 35 and 41 is/are withdrawn from consideration.
5) ☒ Claim(s) 28, 29 and 37-40 is/are allowed.
6) ☒ Claim(s) 21-24, 27, 32-34 and 36 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 07 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is response to Applicants' AMENDMENT filed 08/19/2008.
2. Claims 1-20, 25-26, 30-31, 35 and 41 were cancelled.
3. Claims 21-24, 27, 32-34 and 36 are pending in this application.
4. Claims 28-29 and 37-40 are allowed.

Claim Rejections - 35 USC § 101

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 21-24, 27, 32-34 and 36 rejected under 35 U.S.C. 101 because the claimed invention directed to non-statutory subject matter.
7. Claims 21 and 32 are having "a computer-readable medium" to be defined in instant specification as a variety of forms (page 7, lines 10-12). So, it can be any means that contain, store, communicate, propagate or transport the program for use by or in connection with the instruction execution system, apparatus or device. It could even be paper or another suitable medium upon which the program is printed. The propagated signal is a frequency transmission, or signal per se.

"Signal" is also defined as "[a] representation of information conveyed by a carrier," "[d]etectable transmitted energy that can be used to carry information," "[a] time-dependent variation of a characteristic of a physical phenomenon used to convey information," and "[t]he code or pulse that represents intelligence, a message, or a

control function conveyed over a communication system," Communications Standard Dictionary (Chapman & Hall, 3d ed. 1996). While these definitions require a physical existence, there is a long history of referring to numbers (data) as signals in mathematical algorithm patent cases to avoid a non-statutory subject matter rejection. See *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ 673 (claim 8 to "method of converting signals from binary coded decimal form into binary" was not a "process" under 35 U.S.C. §§ 100(b) and 101); *In re Walter*, 618 F.2d 758, 770, 205 USPQ 397, 409 (CCPA 1980) ("The 'signals' processed by the inventions of claims 10-12 may represent either physical quantities or abstract quantities; the claims do not require one or the other.").

The communication or transmission media includes wired media such as a wired network or direct-wired connection and wireless media such as acoustic, RF, infrared, other wireless media or a machine-readable propagated signal. Signal such as electrical, electromagnetic or digital signal is drawn to form of energy, which is non-statutory subject matter.

Energy is not one of the four categories of invention and therefore this (these) claim(s) is (are) non-statutory. Energy is not a series of steps or acts and thus is not a process. Energy is not a physical article or object and as such is not a machine or manufacture. Energy is not a combination of substances and therefor not a composition of matter.

Contact Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH LY whose telephone number is (571) 272-4039 or via E-Mail: ANH.LY@USPTO.GOV (Written Authorization being given by Applicant (MPEP 502.03 [R-2])) or fax to **(571) 273-4039** (unofficial fax number directly to examiner's office). The examiner can normally be reached on TUESDAY – THURSDAY from 8:30 AM – 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **John Breene**, can be reached on **(571) 272-4107** or Primary Examiner, **Jean Fleurantin**, can be reached on **(571) 272-4035**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Any response to this action should be mailed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, or faxed to: **Central Fax Center: (571) 273-8300**.

ANH LY /AL/
OCT. 15th, 2008

/JEAN B. FLEURANTIN/
Primary Examiner, Art Unit 2162